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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/686,073

10/11/2000

David Traynor

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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY

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EXAMINER

COLBERT, ELLA

ART UNIT

PAPER NUMBER

3696

NOTIFICATION DATE

DELIVERY MODE

03/17/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

<b>Office Action Summary</b>	<b>Application No.</b> 09/686,073	<b>Applicant(s)</b> TRAYNOR ET AL.	
	<b>Examiner</b> Ella Colbert	<b>Art Unit</b> 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-15, 32-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-15, 32-35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Claims 1-4, 8-15, 32-35, 37 and 38 are pending in this communication filed 1/14/08 entered as Amendment After Final Rejection.
2. Applicant's arguments, see arguments, filed 1/14/08, with respect to the Amazon.com reference, Godin, and Fisher have been fully considered and are persuasive. The Finality of the last Office Action has been withdrawn in view of the new grounds of rejection as set forth here below.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-4, 8-15, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,101,484) Halbert et al, Hereafter halbert.

Claims 1 and 15. Halbert discloses, A sales activity feedback method, including: communicating, via a network, information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system (col. 7, lines 13-21 and 36-63); generating a feedback indication for the item, at each of the plurality of price choices, using supply and sales level information generated from the actions of other users of the network based sales system (col. 7, line 64-col. 8, line 27) and communicating, via the network, the feedback indication to the user interface (col. 8, lines 53-60). Halbert did not expressly state a user interface. However, the abstract references a user interface for receiving user inputs for directly manipulating the graphical display.

Claims 2 and 32. Halbert discloses, wherein the communicating of the feedback includes displaying the feedback indication in the user interface (col. 8, lines 53-60).

Claims 3 and 12. Halbert discloses, wherein the communicating of the feedback includes displaying the feedback indication in the form of one of a series of different pictorial icons (col. 8, lines 62-67). The recitation “wherein the communicating of the feedback includes displaying the feedback indication in the form of one of a series of

different pictorial icons” constitutes nonfunctional descriptive material, which is not afforded patentable weight. The communication of feedback would have been performed in the same manner regardless of whether there were a series of different pictorial icons. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F. 3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994).

Claims 4 and 33. Halbert discloses, wherein the feedback indication is associated with one or more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item (col. 8, lines 1-60). Only one of the factors from the group needs to be shown in the reference.

Claims 8 and 13. Halbert discloses, wherein the generating the feedback is performed continuously in near real time (col. 12, lines 3-26).

Claims 9 and 14. Halbert discloses, wherein communicating of the information includes communicating time-separated price choices from a falling-price schedule (col. 11, lines 40-50).

Claim 10. Halbert discloses, The method of claim 1 wherein the communication of information includes communicating information causing the user interface to display a present price, at least one future price, a present purchase control button next to the

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present price and a future purchase control button next to the at least one future price (col. 11, line 51-col. 12, line 38).

Claim 11. Halbert discloses, A user interface of a network based sales system, the user interface to communicate with a sales server via a network, the user interface including: an item identification area responsive to the sales server via the network and to display information pertaining to a plurality of price choices of a selected item (col. 7, lines 13-63); a plurality of price choice selection controls for the selected item displayed in the item identification area to provide communication of a user selection to the sales server via the network, the plurality of price choice selection controls selectively corresponding to the plurality of price choices (col. 8, lines 28-60); and a feedback indication area responsive to the sales server via the network the feedback indication area operative to display a feedback indication associated with the plurality of price choices pertaining to the selected item, the plurality of price choices being derived from a quantity of the item available and sales of the item within the network based sales system (col. 7, lines 15-21 and col. 8, lines 53-60). Halbert did not expressly state a user interface. However, the abstract references a user interface for receiving user inputs for directly manipulating the graphical display. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have either a positive or a negative feedback about the price of an item.

Claim 34. Halbert discloses, user interface of claim 11, wherein at least one attribute of a price choice selection control of the plurality of price choice selection

controls is operative to change during an offering of an item identified in the item identification area (col. 7, lines 45-63).

Claim 35. Halbert discloses, A method including: generating sales information for an item at each of a plurality of sales price levels (col. 7, line 45-col. 8, line 27); and communicating the plurality of sales price levels in association with the generated sales information to a user (col. 8, lines 28-52); receiving from the user a request to alert the user when the item reaches a price choice selected by the user (col. 9, lines 9-58); and communicating a reminder message to the user when the item reaches a price choice selected by the user (col. 9, lines 36-41). Halbert discloses an acknowledgement to the user when the item reaches a price choice selected by the user.

Claim 37. This dependent claim is rejected for the similar rationale as given above for claim 35.

Claim 38. This dependent claim is rejected for the similar rationale as given above for claims 35 and 37.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kaminsky et al (US 2001/0047308) disclosed a pricing marketing and selling system.

### **Inquiries**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/  
Primary Examiner, Art Unit 3696

March 3, 2008